

APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE
STATE OF NEVADA HERETOFORE APPROPRIATED

NOV 30 1977

Date of filing in State Engineer's Office.....

Returned to applicant for correction.....

Corrected application filed..... Map filed..... NOV 30 1977

The applicant..... McCulloch Properties, Inc.

P. O. Box 10075..... of..... Reno
Street and No. or P.O. Box No. City or Town

Nevada 89510....., hereby make... application for permission to change the
State and Zip Code No.

Point of Diversion and Place of Use

of water heretofore appropriated under..... a portion of Permit No. 23888

(Identify existing right by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

1. The source of water is..... underground well

Name of stream, lake or other source.

2. The amount of water to be changed..... 0.1526 c.f.s. (40 acre feet)

Second feet, acre feet.

3. The water to be used for..... irrigation and domestic

If for stock state number and kind of animals.

4. The water heretofore used for..... irrigation

If for stock state number and kind of animals.

5. The water is to be diverted at the following point..... NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32, T.23N., R.21E.,

M.D.B. & M., from which the W $\frac{1}{4}$ corner of said Section 32 bears N.60°

Describe as being within a 40-acre subdivision of public survey and by course and distance to a section corner. If on unsurveyed land, it should be
05'11" W., 2457.43 feet
stated.

6. The existing point of diversion is located within..... SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, T.22N., R.21E.,

M.D.B. & M., from which the SW corner of said Section 5 bears S.65°

If point of diversion is not changed, do not answer.

13'05" W., 2755.53 feet

7. Proposed place of use..... NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32, T.23N., R.21E., M.D.B. & M., 10.0

Describe by legal subdivisions. If for irrigation state number of acres to be irrigated.

acres to be irrigation

8. Existing place of use..... NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8, T.22N., R.21E., M.D.B. & M., 10.0

Describe by legal subdivisions. If presently used for irrigation, state number of acres irrigated.

acres being irrigation

9. Use will be from..... January 1..... to..... December 31..... of each year.
Day and Month Day and Month

10. Use has been from..... March 1..... to..... October 31..... of each year.
Day and Month Day and Month

11. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and

specifications of your diversion or storage works.) drilled well with pump and motor

State manner in which water is to be diverted, whether by dam or other works,

with sprinkler system

whether through pipes, ditches, flumes, or other conduits.

12. Estimated cost of works \$10,000.00
13. Estimated time required to construct works 1 year
14. Estimated time required to complete the application of water to beneficial use 2 years
15. Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.

This application is being made in the name of McCulloch Properties, Inc., for Billy and Jerri Nelms as per attached contract

McCulloch Properties, Inc. Applicant s/ Wells O'Brien
P. O. Box 10075
 Compared le/ga bl/bc By Reno, Nevada 89510

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion and place of use of a portion of the waters of an underground source as heretofore granted under Permit 23888, Certificate 8283 is issued subject to the terms and conditions imposed in said Permit 23888, Certificate 8283 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a measuring device must be installed in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

The period of use shall be from March 1st to October 31st of each year.

The amount of water to be changed shall be limited to the amount which can be applied to beneficial use, and not to exceed 0.1526 cubic feet per second, but not to exceed a seasonal duty of 4.0 acre-feet per acre of land irrigated from any and/or all sources.

Actual construction work shall begin on or before November 3, 1978

Proof of commencement of work shall be filed before December 3, 1978

Work must be prosecuted with reasonable diligence and be completed on or before November 3, 1979

Proof of completion of work shall be filed before December 3, 1979

Application of water to beneficial use shall be made on or before November 3, 1980

Proof of the application of water to beneficial use shall be filed on or before December 3, 1980

Map in support of proof of beneficial use shall be filed on or before December 3, 1980

Commencement of work filed OCT 20 1978
 Completion of work filed OCT 20 1978
 Proof of beneficial use filed OCT 1 1979
 Cultural map filed OCT 1 1979
 Certificate No. 9862 Issued FEB 23 1982
 Recorded Bk. 33 Page 33

IN TESTIMONY WHEREOF, I, ROLAND D. WESTERCARD,
 State Engineer of Nevada, have hereunto set my hand and the seal of
 my office, this 3rd day of MAY,

A.D. 19 78

State Engineer

TERMS AND CONDITIONS

1. In accordance with a Real Estate Purchase Agreement and Escrow Instructions and Promissory Note secured by a recorded Deed of Trust, Buyer is purchasing from Seller a certain parcel of land located within the Palomino Valley General Improvement District. Any cash deposit or downpayment received hereunder shall be forthwith delivered to and held by CATTLEMEN'S TITLE GUARANTEE COMPANY hereby designated by Seller and Buyer as Escrow Agent. By signing this Agreement, Buyer hereby irrevocably instructs Escrow Agent to retain this money until the Deed to Buyer has been recorded as provided in said Real Estate Purchase Agreement and Escrow Instructions and immediately thereafter such funds and monies shall be disbursed to and become the property of the Seller and its assigns.

2. All subsequent payments hereunder shall be made payable to McCulloch Properties, Inc. or designee at P.O. Box 29621, Phoenix, Arizona 85038, or such other address as may hereafter be designated. If any payment required hereunder is not made when due and without waiving any rights or remedies of Seller therefor, the Buyer agrees to pay a late-payment charge, not to exceed \$2.50 for each delinquency, which Seller may impose for special handling.

3. On or after January 1, 1981, upon written request from the Buyer, Seller shall convey the title to said water rights to Buyer, provided all the following conditions have been satisfied:

a. This agreement has been paid in full and all the terms and conditions herein have been satisfied and are not in default; and

b. The Buyer has paid 35% of the principal purchase price of his property under the aforementioned Real Estate Purchase Agreement and Escrow Instructions and Promissory Note and is in good standing and not in default under his Deed of Trust; and

c. Buyer at his cost applies in the name of the Seller for a change of point of diversion and place of use to his property, puts the water to beneficial use and qualifies the water rights permit for a certificate from the Nevada State Water Engineer. Seller will convey the water rights to the Buyer simultaneously with the issuance of said certificate and thereby said water rights shall be appurtenant to Buyer's property.

4. During the time when Buyer is purchasing water rights and prior to their conveyance to Buyer, Seller shall have the right to use said water rights without payment of any compensation to Buyer. In consideration of this right granted to Seller, Seller will keep said water rights current in accordance with the present laws of the State of Nevada. If, subsequent to December 31, 1985, Buyer has paid the full purchase price for his water rights and 35% or more of the principal purchase price of his property and is then current and not otherwise in default but has not put the water to beneficial use and has not received a water rights certificate, Seller shall nevertheless have the right to convey said water rights by Buyer. However, by December 31, 1990, if Buyer is in good standing and not then in default of any documents or agreements referred to in Paragraph 9 hereof, Seller will convey said water rights to Buyer or his assignee. Buyer acknowledges it is Buyer's obligation to then comply with the rules and regulations of the State of Nevada with respect to the certificating of said water rights for use on said property and failing to do so Buyer's interest in said water rights may be subject to termination by the State of Nevada. Seller's obligation to keep said water rights current in accordance with this paragraph shall terminate upon Seller's conveyance of said water rights to Buyer.

5. If Buyer has received a conveyance of said water rights or if Buyer is in good standing and not in default, and subject to first obtaining the express written consent of the Seller, and further subject to all legal requirements regarding transfer of water rights, the Buyer may convey said water rights or assign this agreement and the rights hereunder but only to property owners or purchasers of property within the boundaries of Palomino Valley General Improvement District, for use thereon. The provisions of this paragraph shall expire on December 31, 1990. Seller's conveyance of all water rights to Buyer shall be subject to the restrictions set forth in this paragraph.

6. Buyer agrees to pay for all costs and expenses which may be incurred in connection with obtaining the conveyance and use of said water rights.

7. Seller shall pay all taxes levied or assessed against the water rights, if any, until such time as said water rights are conveyed to Buyer.

8. Seller makes no representation, warranty, or guarantee of the availability, quantity or quality of the water.

9. Time is of the essence of this agreement. No waiver by Seller of a breach or default of any covenant or condition hereof shall be construed as a waiver of any succeeding breach or default thereof. Seller's remedies hereunder shall be cumulative. No tender or offer of performance by Seller shall be a condition precedent to its right to exercise any right, option or privilege hereunder. It is mutually agreed that any default, at any time, of the terms of said Real Estate Purchase Agreement and Escrow Instructions, Promissory Note, Deed of Trust or any of the documents relating thereto, shall constitute a default of this agreement and any default of this agreement shall constitute a default of the aforesaid agreements and documents. Buyer further agrees said Deed of Trust and Promissory Note are additional security for the Buyer's payments and performance of this agreement.

10. Should Buyer fail to make any payment when due or to perform timely any covenant or condition hereof, Seller, without limiting any other right or remedy at law or in equity and in addition thereto may (a) obtain specific performance, (b) terminate all of Buyer's rights hereunder and thereby reacquire all or any of Buyer's right, title and interest in and to said water rights. Termination by Seller shall be subject to the expiration of a default period of 30 days pursuant to written notice thereof mailed to Buyer in accordance with Paragraph 11 hereof. Failure by Buyer to remedy such default or breach within said 30 day notice period shall constitute a termination of this agreement. Buyer agrees upon such termination to forfeit to Seller as liquidated damages all payments made hereunder and all right, title and interest of Buyer in and to said water rights and forthwith to surrender to Seller peaceable possession thereof and Buyer shall cooperate with Seller and execute any and all necessary documents to reinstate good title and use of said water rights in Seller. Buyer will pay all costs and expenses incurred by Seller to enforce or terminate this agreement, including reasonable attorney's fees and all court costs, if any.

11. Notice to Buyer shall be deemed as properly given when mailed postage prepaid, via regular mail to Buyer's address as appears on the records of Seller. Buyer will timely notify Seller in writing of any changes of address.

12. This agreement shall be construed under the laws of the State of Nevada.

13. This agreement shall be binding upon and inure to the benefit of, as the case may be, (subject to the terms of this agreement regarding assignment or sale), the heirs, devisees, administrators, executors, successors and assigns of each of the parties hereto.